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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/050,343	01/16/2002	Anthony K. Crespo	27436.00	6235
22465	7590	10/04/2004	EXAMINER	
PITTS AND BRITTIAN P C			BAXTER, JESSICA R	
P O BOX 51295			ART UNIT	PAPER NUMBER
KNOXVILLE, TN 37950-1295			3731	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/050,343	Applicant(s) CRESPO, ANTHONY K.	
	Examiner Jessica R Baxter	Art Unit 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Group I in the reply filed on July 20, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 20, 2004.

The requirement is still deemed proper and is therefore made FINAL.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 50, 72 and 130. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 54, 64, and 67.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,632,756 to Kruglick in view of U.S. Patent No. 6,736,826 to Begun.

Kruglick discloses an appliance for ear cleaning comprising an elongated hollow tube defining a stem (24) having at least one open end (end closest to mono filaments, FIG. 2), a plurality of lengths of monofilament (28), each having an outboard end and an inboard

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end, a mass bonding each of said outboard ends of said monofilaments to one another with the respective ones of said plurality of lengths of said monofilaments at locations disposed substantially 90 degrees apart about the periphery of said mass and with each of said lengths of monofilament extending laterally away from said mass (FIG. 7, intersection of monofilaments), said mass extending laterally thereof onto each of said outboard ends of said lengths of monofilament, each of said plurality of lengths of monofilaments being bent along its length to the extent that each of said inboard ends of each of said plurality of lengths of monofilament are gathered together in side-by-side, closely-packed, relationship (FIG. 2), said gathered inboard ends of said lengths of monofilaments being received with said at least one open end of said stem, means bonding said gathered inboard ends of said lengths of monofilaments within said at least one open end of said stem, thereby defining a bulbous configuration of said plurality of lengths of monofilaments. Kruglick discloses the claimed invention except for the specific material. Begun discloses that an ear cleaning device may be made of polypropylene, a thermoplastic, since polypropylene can be vigorously manipulated in the ear canal by the user and still will not break (Column 3 lines 62-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kruglick with a polypropylene material in order to allow the user to manipulate the device vigorously without the device breaking.

Regarding claim 7, the limitation, "wherein said mass of thermoplastic is defined by melting and solidification of said intersecting monofilaments at said juncture of intersection of said intersecting monofilaments". This limitation is viewed as a product by process type claim. Though the claims recite the process by which the surgical component is made, it is still a product claim. Only the structure of the product determines whether it is known in

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the art or it is obvious; the process by which the structure of the surgical device is made does not govern whether a product is patentable. The process described in the claim would form the same device as if the device was molded or casted.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,197,968 to Clement

U.S. Patent No. 6,224,612 to Bates et al.

U.S. Patent No. 5,334,212 to Karrell

U.S. Patent No. 6,264,664 to Avellanet

U.S. Patent No. 5,715,850 to Markgraaf

U.S. Patent No. 6,270,510 to Westendorf

U.S. Patent No. 5,888,199 to Karrell et al.

U.S. Patent No. 6,626,915 to Leveillee

U.S. Patent No. 6,063,082 to DeVore et al.

U.S. Patent No. 6,776,786 to Kim

U.S. Patent No. 6,187,017 to Gregory, Jr.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 703-308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
jrb

  
**ANH TUAN T. NGUYEN**  
**PRIMARY EXAMINER**

9/29/04